

### **386A.1-030 Governing instrument.**

- (1) Except as otherwise provided in KRS 386A.1-040(2), the governing instrument governs:
  - (a) The management, affairs, and conduct of the business of a statutory trust; and
  - (b) The rights, interests, duties, obligations, and powers of, and the relations among, the trustees, the beneficial owners, the statutory trust, and other persons.
- (2) To the extent the governing instrument does not otherwise provide for a matter described in subsection (1) of this section, this chapter governs the matter.
- (3) The governing instrument may include one (1) or more instruments, agreements, declarations, bylaws, or other records and refer to or incorporate any record.
- (4) Subject to KRS 386A.1-040(2), without limiting the terms that may be included in a governing instrument, the governing instrument may:
  - (a) Provide the means by which beneficial ownership is determined and evidenced;
  - (b) Limit a beneficial owner's right to transfer a beneficial interest;
  - (c) Provide for one (1) or more series under Subchapter 4 of this chapter;
  - (d) To the extent that voting rights are granted to the beneficial owners or trustees under the governing instrument, include terms relating to:
    1. Notice of the date, time, place, or purpose of any meeting at which any matter is to be voted on;
    2. Waiver of notice;
    3. Action by consent without a meeting;
    4. Establishment of record dates;
    5. Quorum requirements;
    6. Voting:
      - a. In person;
      - b. By proxy;
      - c. By any form of communication that creates a record, telephone, or video conference; or
      - d. In any other manner; or
    7. Any other matter with respect to the exercise of the right to vote;
  - (e) Provide for the creation of one (1) or more classes of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties;
  - (f) Provide for any action to be taken without the vote or approval of any particular trustee or beneficial owner, or classes of trustees, beneficial owners, or beneficial interests, including:
    1. Amendment of the governing instrument;
    2. Merger, conversion, or reorganization;
    3. Appointment of trustees;

4. Sale, lease, exchange, transfer, pledge, or other disposition of all or any part of the property of the statutory trust or the property of any series thereof; and
  5. Dissolution of the statutory trust;
- (g) Provide for the creation of a statutory trust, including the creation of a statutory trust to which all or any part of the property, liabilities, profits, or losses of a statutory trust may be transferred or exchanged, and for the conversion of beneficial interests in a statutory trust, or series thereof, into beneficial interests in the new statutory trust or series thereof;
  - (h) Provide for the appointment, election, or engagement of agents or independent contractors of the statutory trust or delegates of the trustees, or agents, officers, employees, managers, committees, or other persons that may manage the business and affairs of the statutory trust, designate their titles, and specify their rights, powers, and duties;
  - (i) Provide rights to any person, including a person who is not a beneficial owner or not otherwise a party to the governing instrument, to the extent set forth therein;
  - (j) Subject to paragraph (k) of this subsection, specify the manner in which the governing instrument may be amended, including, unless waived by all persons for whose benefit the condition or requirement was intended:
    1. A condition that a person that is not a party to the instrument must approve the amendment for it to be effective; and
    2. A requirement that the governing instrument may be amended only as provided in the governing instrument or as otherwise permitted by law;
  - (k) Provide that a person may comply with paragraph (j) of this subsection by a representative authorized by the person orally, in a record, or by conduct;
  - (l) Provide that a person becomes a beneficial owner, acquires a beneficial interest, and is bound by the governing instrument if the person complies with the conditions for becoming a beneficial owner set forth in the governing instrument;
  - (m) Provide that the beneficial interest of any beneficial owner who fails to make any contribution that the beneficial owner is obligated to make or who otherwise violates an obligation undertaken in the governing instrument shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting beneficial owner's proportionate interest in the statutory trust, subordinating the beneficial owner's interest to that of nondefaulting beneficial owners, a forced sale of that beneficial interest, forfeiture of his or her beneficial interest, the lending by other beneficial owners of the amount necessary to meet the defaulting beneficial owner's commitment, a fixing of the value of his or her beneficial interest by appraisal or by formula and redemption or sale of the beneficial interest at such value, or other penalty or consequence;

- (n) Provide that the statutory trust or the trustees, acting for the statutory trust, hold beneficial ownership of any income earned on securities held by the statutory trust that are issued by any business entity formed, organized, or existing under the laws of any jurisdiction;
- (o) Provide for the establishment of record dates;
- (p) Grant to, or withhold from, a trustee or beneficial owner, or class of trustees or beneficial owners, the right to vote, separately or with any or all other trustees or beneficial owners, or class of trustees or beneficial owners, on any matter; and
- (q) Provide that neither the power to direct a trustee or other person nor the exercise of the power by any person, including a beneficial owner, causes the person to be a trustee or imposes on the person duties, including fiduciary duties, or liabilities relating to these duties, to a statutory trust or beneficial owner.

**Effective:** July 12, 2012

**History:** Created 2012 Ky. Acts ch. 81, sec. 3, effective July 12, 2012.